

The Honorable Mary Alice Theiler

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Damarius Butts, a deceased individual and
Stephanie Butts an Individual and Mother of
Damarius Butts and Executor of the Estate of
Damarius Butts,

Plaintiffs,

vs.

Seattle Police Department Officers Elizabeth
Kennedy #7725, Hudson Kang #7759 Officers
Joshua Vaaga #8397; and Chris Myers #5452
Who Are Named In Their Individual Capacity;
Does 1 Through 15 Who Are Employees Of
The Seattle Police Department and Are Named
In Their Individual Capacity; The City of
Seattle and the Seattle Police Department,
which is a division Within the City of Seattle,

Defendants.

No. 2:20-CV-00576-MAT

DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES

JURY DEMAND

Seattle Police Department ("SPD") Officers Elizabeth Kennedy, Hudson Kang, Joshua
Vaaga, Chris Myers, and the City of Seattle (collectively "Defendants") answer each of the numbered
paragraphs of Plaintiffs' Complaint as follows:

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT
FOR DAMAGES (2:20-CV-00576-MAT) - 1

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I. FEDERAL JURISDICTION AND VENUE

1. This paragraph consists only of legal conclusions to which no response is necessary.

2. This paragraph consists only of legal conclusions to which no response is necessary.

3. Defendants ADMIT that some Defendants reside within the Western District of Washington and that the events and omissions described in Plaintiffs' complaint occurred in that judicial district.

II. PARTIES

4. Defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph, and therefore DENY them.

5. Defendants ADMIT that Elizabeth Kennedy was a law enforcement officer for the Seattle Police Department (SPD), that she was assigned to perform duties for SPD in the State of Washington, and that she is being sued in her individual capacity.

6. Defendants ADMIT that Hudson Kang was a law enforcement officer for the Seattle Police Department (SPD), that he was assigned to perform duties for SPD in the State of Washington, and that he is being sued in his individual capacity.

7. Defendants ADMIT that Joshua Vaaga was a law enforcement officer for the Seattle Police Department (SPD), that he was assigned to perform duties for SPD in the State of Washington, and that he is being sued in his individual capacity.

8. Defendants ADMIT that Chris Myers was a law enforcement officer for the Seattle Police Department (SPD), that he was assigned to perform duties for SPD in the State of Washington, and that he is being sued in his individual capacity.

9. Defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph, and therefore DENY them.

10. Defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph, and therefore DENY them.

11. Defendants DENY the allegations of this paragraph.

12. Defendants are without knowledge or information sufficient to admit or deny the allegations of this paragraph, and therefore DENY them.

III. ALLEGATIONS COMMON TO ALL CLAIMS

13. Defendants ADMIT that events alleged occurred the State of Washington.

14. The allegations in this paragraph contain legal conclusions to which no response is necessary.

15. Defendants ADMIT that a Tort Claim Form was filed; the remaining allegations of this paragraph contain legal conclusions to which no response is necessary.

16. Defendants ADMIT the incident occurred on April 20, 2017, that Demarius Butts (hereinafter “Butts”) was an African American male, that he was believed to have engaged in shoplifting at the 7-Eleven on 1st Avenue in the City of Seattle around 1 p.m., and that he brandished a silver gun at the store manager. A gun was found on Butts after he was deceased. Defendants are without knowledge or information sufficient to admit or deny the remaining allegations of this paragraph, and therefore DENY them.

17. Defendants ADMIT the allegations of this paragraph.

18. Defendants ADMIT the allegations of this paragraph.

19. Defendants ADMIT the allegations of this paragraph.

20. Defendants ADMIT the allegations of this paragraph.

21. Defendants ADMIT that Butts and his sister “entered the 7-11 and grabbed multiple items including chips and soda.” Defendants ADMIT that Butts “grabbed a 12 pack of Heineken

1 beer” and that he and his sister walked out of 7-Eleven store. Defendants ADMIT
2 “Yohannes followed” Butts and his sister and “contacted” Butts in the alcove of the 7-
3 Eleven store and “took back the beer.” Defendants are without knowledge or information
4 sufficient to admit or deny the remaining allegations of this paragraph, and therefore
5 DENY them.

6 22. Defendants ADMIT the allegations of this paragraph.

7 23. Defendants ADMIT the allegations of this paragraph.

8 24. Defendants ADMIT the allegations of this paragraph.

9 25. Defendants ADMIT the allegations of this paragraph.

10 26. Defendants ADMIT the allegations of this paragraph.

11 27. Defendants ADMIT “there were plastic blinds covering the entrance” and Butts “ran
12 through” a set of “double doors”. Defendants are without knowledge or information
13 sufficient to admit or deny the remaining allegations of this paragraph, and therefore
14 DENY them.

15 28. Defendants ADMIT that Officer Kennedy and Officer Bandel reached the door at the same
16 time and DENY the remaining allegations of this paragraph

17 29. Defendants ADMIT that that Butts was inside a room and DENY the remaining
18 allegations of this paragraph.

19 30. Defendants ADMIT the allegations of this paragraph.

20 31. Defendants ADMIT the allegations of this paragraph.

21 32. Defendants DENY the allegations of this paragraph.

22 33. Defendants DENY the allegations of this paragraph.

1 34. Defendants are without knowledge or information sufficient to admit or deny the
2 allegations of this paragraph, and therefore DENY them.

3 35. Defendants ADMIT that “other officers were arriving” and that Officers were providing
4 commands. Defendants DENY the remaining allegations in this paragraph.

5 36. Defendants ADMIT the allegations of this paragraph.

6 37. Defendants ADMIT that Officers fired while Butts was drawing a gun and DENY the
7 remaining allegations in this paragraph.

8 38. Defendants ADMIT the allegations of this paragraph.

9 39. Defendants ADMIT multiple shots were fired at Butts. Defendants lack knowledge or
10 information sufficient to form a belief as to the truth of the remaining allegation in this
11 paragraph, and therefore DENY the same.

12 40. Defendants ADMIT that Butts shot Officer Kang in the chin and that the bullet travelled
13 to his chest region.

14 41. Defendants ADMIT that Butts shot Officer Myers in his left thumb with a bullet.

15 42. Defendants ADMIT that Butts shot Officer Kennedy in the vest and deny the remaining
16 allegations of this paragraph.

17 43. Defendants ADMIT the allegations of this paragraph.

18 44. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
19 allegation in this paragraph, and therefore DENY the same.

20 45. Defendants lack knowledge or information sufficient to form a belief as to the truth of the
21 allegation in this paragraph, and therefore DENY the same.

22 46. Defendants ADMIT that SWAT team arrived and a recon robot supplied by King County
23 Sheriff’s Department was deployed to Butts’ location. Defendants lack knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore DENY the same.

47. Defendants ADMIT that the recon robot located Butts and that no movement was seen from Butts. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore DENY the same.

48. Defendants ADMIT that a noise-flash diversion devise was deployed and no movement was seen and DENY the remaining allegations in this paragraph.

49. Defendants ADMIT the allegations of this paragraph.

50. Defendants DENY the allegations of this paragraph.

51. Defendants ADMIT the allegations of this paragraph.

52. Defendants ADMIT that Officer Blitz entered to see if Butts would react no movement was seen and DENY the remaining allegations in this paragraph.

53. Defendants DENY the allegations of this paragraph.

54. Defendants ADMIT that Officer Blitz did bite Butts as he was attempting to pull him out of the room and that Butts showed no movement. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore DENY the same.

55. Defendants ADMIT the allegations of this paragraph.

56. Defendants ADMIT that a silver revolver described as a Smith and Wesson .38 with serial number obscured was located and DENY the remaining the allegation in this paragraph.

**IV. FIRST CAUSE OF ACTION – COUNT 1 – VIOLATION OF 42 USC 1983
EXCESSIVE FORCE**

57. Defendants incorporate by reference, paragraphs 1 through paragraph 57.

1 58. Defendants ADMIT on April 20, 2017, Butts was running from the police after shoplifting
2 from a 7-Eleven store and ran into a room. Defendants DENY the remaining allegations
3 in this paragraph.

4 59. Defendants ADMIT that Officer Kennedy, Kang, and Myers chased Butts into the room
5 and took positions at the double door to the room containing Butts and DENY the
6 remaining the allegation in this paragraph.

7 60. Defendants DENY the allegations of this paragraph.

8 61. Defendants DENY the allegations in this paragraph.

9 62. Defendants ADMIT that officers were fully dressed in their officer uniforms and are
10 without knowledge or information sufficient to admit or deny the allegations of this
11 paragraph, and therefore DENY them.

12 63. Defendants DENY the allegations of this paragraph.

13 64. Defendants ADMIT they shot Butts in self-defense and are without knowledge or
14 information sufficient to admit or deny the remaining allegations of this paragraph, and
15 therefore DENY them.

16 65. Defendants DENY the allegations of this paragraph.

17 66. Defendants DENY the allegations of this paragraph.

18 67. Defendants ADMIT that Butts was shot in the front torso, in the side and the back and
19 DENY the remaining the allegation in this paragraph.

20 68. This paragraph consists only of legal conclusions to which no response is necessary.

21 **V. SECOND CAUSE OF ACTION – VIOLATION OF 42 USC 1986**
22 **CONSPIRACY**

23 69. Defendants incorporate by reference, paragraphs 1 through paragraph 69.

1 70. Defendants DENY the allegations of this paragraph.

2 71. Defendants DENY the allegations set forth in this paragraph.

3 72. Defendants DENY the allegations set forth in this paragraph.

4 73. Defendants are without knowledge or information sufficient to admit or deny the
5 allegations of this paragraph, and therefore DENY them.

6 74. Defendants DENY the allegations set forth in this paragraph.

7 75. Defendants DENY the allegations set forth in this paragraph.

8 **VI. THIRD CAUSE OF ACTION – WRONGFUL DEATH**

9 76. Defendants incorporate by reference, paragraphs 1 through paragraph 76.

10 77. This Paragraph states a legal conclusion to which no response is required.

11 78. This Paragraph states a legal conclusion to which no response is required.

12 79. Defendants are without knowledge or information sufficient to admit or deny the
13 allegations of this paragraph, and therefore DENY them. The remainder of the paragraph
14 states a legal conclusion to which no response is required.

15 80. This Paragraph states a legal conclusion to which no response is required.

16 81. Defendants are without knowledge or information sufficient to admit or deny the
17 allegations of this paragraph, and therefore DENY them.

18 82. Defendants DENY the allegations of this paragraph.

19 83. Defendants DENY the allegations set forth in this paragraph.

20 84. Defendants are without knowledge or information sufficient to admit or deny the
21 allegations of this paragraph, and therefore DENY them.

22 85. This paragraph consists only of legal conclusions to which no response is necessary.

23 ///

VII. FOURTH CAUSE OF ACTION – OUTRAGE

86. Defendants incorporate by reference, paragraphs 1 through paragraph 86.

87. Defendants DENY the allegations of the first sentence of this paragraph. The second sentence of this Paragraph states a legal conclusion to which no response is required.

88. Defendants DENY the allegations set forth in this paragraph.

89. Defendants DENY the allegations set forth in this paragraph.

90. Defendants DENY the allegations set forth in this paragraph.

91. Defendants DENY the allegations set forth in this paragraph.

PLAINTIFFS' DEMAND JUDGMENT

Plaintiffs' demand judgment is a prayer for relief which requires no response. The Defendants DENY that Plaintiffs are entitled to the relief set forth in this section.

THE DEFENDANTS' AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim upon which relief may be granted.

2. The City, a municipal corporation, and its agencies, are immune from liability for prejudgment interest on tort judgments and are immune from punitive damages.

3. Punitive damages are not available against the City.

4. Defendant Officers are entitled to qualified immunity.

5. Any damages suffered by Plaintiffs were caused in whole or in part by their own conduct or fault.

6. Plaintiffs assumed the risk of their alleged injuries by their own actions.

7. Plaintiffs may have failed to take reasonable steps to mitigate damages.

8. Mr. Butts was engaged in a felony at the time of the occurrence causing his alleged injuries and/or death and the felony was a proximate cause of his alleged injuries and/or death.

Accordingly, Plaintiff's claims under Washington law are barred by RCW 4.24.420.

9. Defendants reserve the right to amend this answer to assert additional affirmative defenses, counterclaims, or cross-claims as may be appropriate based upon future discovery. Nothing contained in this Answer should be construed as a waiver of any such additional defenses.

WHEREFORE, Defendants respectfully request that Plaintiffs' Complaint be dismissed with prejudice, that they be awarded costs and reasonable attorneys' fee herein, and that they be granted such other and further relief as the Court finds just and equitable.

DATED this 27th day of July, 2020.

PETER S. HOLMES
Seattle City Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2020 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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s/ Jennifer Litfin
 Jennifer Litfin, Legal Assistant